

REMARKS

This is in response to the Office Action dated December 14, 2007 in which the amendment filed August 10, 2007 was objected to for introducing new matter into the disclosure; the drawings were objected to under 37 CFR 1.83(a); the specification was objected to for failing to provide proper antecedent basis for claimed subject matter; claims 7-9 and 13-15 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite; claims 1-4 and 9 were rejected under 35 U.S.C. § 102(b) as being anticipated by Sperl (U.S. Patent No. 2,969,011); claims 1-5, 8-12 and 14-18 were rejected under 35 U.S.C. § 102(e) as being anticipated by Sculuca (U.S. Patent No. 7,107,898); claims 7 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sperl; claims 7 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sculuca; and claim 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Sperl in view of Blair (U.S. Patent No. 2,714,465) and as being unpatentable over Sculuca in view of Blair. With this Amendment, claims 1, 5, 10, and 12 have been amended, claim 6-9 and 13-15 have been cancelled, and claims 19-21 have been added. Figures 2A, 2B, and 2C have been cancelled, and replacement drawings have been provided. The specification has been amended to reflect the removal of Figures 2A, 2B, and 2C. In reliance on the following remarks, the present application with pending claims 1-5, 10-12, and 16-21 is in condition for allowance, and reconsideration and notice to that effect are respectfully requested.

Objection to Amendment filed August 10, 2007

In the Office Action, the amendment filed August 10, 2007 was objected to under 35 U.S.C. § 132(a) for introducing new matter into the disclosure. The Office Actions asserts that Figures 1-3 introduce new matter. In particular, the Office Action asserts that Figure 1 introduces rectangular openings; Figure 2A introduces oval shaped openings; Figure 2B introduces diamond shaped openings; Figure 2C introduces rectangular openings of a different shape; Figures 2, 2A, 2B and 2C introduce different positioning of the openings; and Figures 2, 2A, 2B and 2C introduce rounded bottom corners. With this Amendment, Figures 2A, 2B, and 2C have been cancelled.

Figures 1-3 do not introduce new matter to the disclosure. Figure 1 illustrates rectangular apertures 20 in sloped side 18. While difficult to perceive, the apertures in Figure 1 filed with the application on March 2, 2004, were also rectangular. Figure 3, also filed with the application on March 2, 2004, illustrates a different view of the baking tray and sloped side 18; Figure 3 clearly shows a rectangular aperture. Figure 2 illustrates sloped sides 18 with two apertures in the upper portion of the sloped side and one aperture in the lower portion of the sloped slide. Figure 2, filed with the application on March 2, 2004, also illustrates a sloped side 18 with apertures in the same configuration (two in the upper portion and one in the lower portion). Figures 2 and 3 illustrate sloped sides 18 with rounded corners. While difficult to perceive, Figure 2, filed with the application on March 2, 2004, also illustrates a sloped side 18 with rounded corners.

For the foregoing reasons, Figures 1, 2, and 3 do not introduce new matter into the disclosure. Thus, the objections to the Amendment filed August 10, 2007 with respect to Figures 1, 2, and 3 should be withdrawn.

Objection to the Drawings under 37 CFR 1.83(a)

In the Office Action, the drawings were objected to under 37 CFR 1.83(a). The Office Action asserts that the triangular shape of the support in claims 5 and 12; the hinge in claim 6; the oval and diamond shaped apertures in claims 7, 8, 13 and 14; and the apertures with a longer vertical axis than horizontal axis in claims 9 and 15 must be shown or the features cancelled from the claims. With this Amendment, claims 6-9 and 13-15 have been cancelled.

Claims 5 and 12 have been amended to require a support that forms an inverted V-shape having two sloped sides. The inverted V-shape of the support 16 with sloped sides 18 is clearly illustrated in Figure 1; support 16 has an inverted V-shape.

For the foregoing reasons, the drawings show every feature of claims 5 and 12. Thus, the objections to the drawings under 37 CFR 1.83(a) with respect to these claims should be withdrawn.

Objection to the Specification

In the Office Action, claims 5-9 and 12-15 were objected to as failing to provide a drawing showing the appropriate claimed structure. With this Amendment, claims 6-9 and 13-15 have been cancelled. The Office Action asserts that the triangular shape of the support as stated in claims 5 and 12 is not supported in the specification. Claims 5 and 12 have been amended to require a support that forms an inverted V-shape having two sloped sides. The inverted V-shape of the support 16 with sloped sides 18 is clearly illustrated in Figure 1; support 16 has an inverted V-shape.

For the foregoing reasons, the claimed structures of claims 5 and 12 are provided in the drawings. Thus, the objections to the specification should be withdrawn with respect to those claims.

Rejection of Claims 7-9 and 13-15 under 35 U.S.C. § 112, Second Paragraph

In the Office Action, claims 7-9 and 13-15 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With this Amendment, claims 7-9 and 13-15 have been cancelled.

Rejection of Claims 1-4 and 9 under 35 U.S.C. § 102(b)

In the Office Action, independent claim 1 and dependent claims 2-4 and 9 were rejected under 35 U.S.C. § 102(b) as being anticipated by Sperl (U.S. Patent No. 2,969,011). With this Amendment, claim 9 has been cancelled. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

As amended, claim 1 requires a baking tray having a base and a generally angled support elevated above the base and inclined with respect to the base. The baking tray has at least

one aperture on the support that is spaced vertically from the base for inserting a straight stick or skewer. Claim 1 also requires that the aperture is positioned on the support to support food on the inserted stick or skewer so that the stick or skewer is elevated above the base and generally horizontal and parallel to the base of the baking tray. Figure 1 illustrates one embodiment of the baking tray of claim 1.

Sperl teaches a skewer unit for handling and serving flaming foods. Sperl describes a base or platter B having a lower platter or dish 5, an upper metallic section 6, and a skewer socket 7. However, Sperl does not teach a support elevated above the base. Figure 1 shows that upper metallic section 6 (which the Office Action asserts is equivalent to the support of claim 1) is disposed within the lower platter or dish 5. The handle flange sections 5a of the base are clearly located above the upper metallic section 6. *See* Figure 1. Thus, the support in Sperl is not elevated above the base. Additionally, Sperl does not teach a support inclined with respect to the base. The upper metallic section 6 and the lower platter or dish 5 both angle upwards at their respective ends. Thus, the upper metallic section 6 is generally parallel to the lower platter or dish 5 and not at an incline with respect to the lower platter or dish 5.

Furthermore, Sperl does not teach at least one aperture on the support that is spaced vertically from the base as required by amended claim 1. In Sperl, the upwardly extending skewer socket 7 is designed to receive a skewer or rapier 8. The skewer socket 7 is not an aperture in the upper metallic section 6 (i.e. the support), but rather a separate component attached to the upper metallic section 6. “[U]pwardly extending skewer socket 7 is rigidly affixed to the base support B preferably being welded or otherwise anchored at its lower end to the metallic upper section 6.” *See* col. 2, lines 44-47. Thus, Sperl does not teach at least one aperture on the support. Moreover, Sperl does not teach that at least one aperture on the support is spaced vertically from the base. According to Sperl, the skewer socket 7 is rigidly affixed to the base. Figures 1 and 3 illustrate that the skewer socket 7 is not spaced vertically from the base. As shown, more than half of the skewer socket 7 element is lower than the lower platter or dish 5. Thus, the skewer socket 7 is not spaced

vertically from the base and Sperl does not teach at least one aperture on the support that is spaced vertically from the base.

Lastly, Sperl does not teach an aperture positioned for supporting a straight stick or skewer with food so that the stick or skewer is elevated above the base and generally horizontal and parallel to the base. Sperl describes a skewer socket 7 designed to position a skewer or rapier 8 at an incline. While a major portion of the skewer or rapier 8 is elevated above the base, Figures 1 and 3 suggest that a portion of the skewer or rapier 8 (the end in the skewer socket 7) is not elevated above the base B or the lower platter or dish 5. Additionally, the skewer or rapier 8 is not generally horizontal or parallel to the base B or the lower platter or dish 5. The Office Action asserts that this would be accomplished if the skewer was properly bent. As amended, claim 1 requires an aperture positioned to support a straight stick or skewer with food so that the stick or skewer is elevated above the base and generally horizontal and parallel to the base. Because these limitations of claim 1 are not taught by Sperl, Sperl does not anticipate claim 1.

In that independent claim 1 is in condition for allowance, the rejections to claims 2-4, which depend therefrom, should be withdrawn and claims 1-4 allowed.

Rejection of Claims 1-5, 8-12 and 14-18 under 35 U.S.C. § 102(e)

In the Office Action, independent claims 1 and 10 and dependent claims 2-5, 8, 9, 11, 12 and 14-18 were rejected under 35 U.S.C. § 102(e) as being anticipated by Sculuca (U.S. Patent No. 7,107,898). With this Amendment, claims 8, 9, 14, and 15 have been cancelled.

As amended, claim 1 requires a baking tray having a base and a generally angled support elevated above the base and inclined with respect to the base. The baking tray has at least one aperture on the support that is spaced vertically from the base for inserting a straight stick or skewer. Claim 1 also requires that the aperture is positioned on the support to support food on the inserted stick or skewer so that the stick or skewer is elevated above the base and generally horizontal and parallel to the base of the baking tray. Figure 1 illustrates one embodiment of the baking tray of claim 1.

Sculuca teaches a skewer holder. In Figures 9A and 9B, Sculuca illustrates a base plate 121 and triangular support elements 126 and 127. However, Sculuca does not teach at least one aperture positioned to support food on the inserted unbent stick or skewer. According to Figure 9B, a side view of the embodiment of Figure 9A, skewer 129 appears to rest on top of the support elements 126 and 127. This figure suggests that the skewer is located on top of the supports rather than through apertures in the supports. Furthermore, a single aperture of the present invention supports a stick or skewer (as demonstrated in Figure 1). In Sculuca, both support elements 126 and 127 are required to support a single skewer. "A skewer 129 may then be supported by the support elements 126 *and* 127." *See* col. 6, lines 17-18 (emphasis added). Thus, even if Sculuca contemplated inserting the skewer into apertures in the support elements 126 and 127, which it does not, Sculuca does not teach (at least) one aperture positioned to support food on the inserted unbent stick or skewer. Because these limitations of claim 1 are not taught by Sculuca, Sculuca does not anticipate claim 1.

As amended, claim 10 requires a device having a base and a support extending upward at an inclined angle from the base. The device has at least one aperture on the support and spaced vertically from the base for receiving a straight stick or skewer with food and supporting the straight stick or skewer with food in a cantilevered fashion. As discussed above, Sculuca teaches a skewer holder. However, Sculuca does not teach supporting a stick or skewer in a cantilevered fashion. Sculuca describes using two support elements 126 and 127 to support a skewer 129. According to Sculuca, the skewer rests on top of the support elements. Thus, Sculuca does not teach supporting the stick or skewer in a cantilevered fashion. Because these limitations of claim 10 are not taught by Sculuca, Sculuca does not anticipate claim 10.

In that independent claims 1 and 10 are in condition for allowance, the rejections to claims 2-5, 11, 12 and 16-18, which depend therefrom, should be withdrawn and claims 1-5, 10-12 and 16-18 allowed.

Rejection of Claims 7 and 8 under 35 U.S.C. § 103(a)

In the Office Action, dependent claims 7 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sperl. With this Amendment, claims 7 and 8 have been cancelled.

Rejection of Claims 7 and 13 under 35 U.S.C. § 103(a)

In the Office Action, dependent claims 7 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sculuca. With this Amendment, claims 7 and 13 have been cancelled.

Rejection of Claim 6 under 35 U.S.C. § 103(a)

In the Office Action, dependent claim 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Sperl in view of Blair (U.S. Patent No. 2,714,465) and over Sculuca in view of Blair. With this amendment, claim 6 has been cancelled.

Conclusion

In view of the foregoing, pending claims 1-5, 10-12 and 16-21 are in condition for allowance. Notice to that effect is respectfully requested

The Commissioner is authorized to charge any additional fees associated with this paper or credit any overpayment to Deposit Account No. 11-0982.

Respectfully submitted,
KINNEY & LANGE, P.A.

Date: 2/29/08

By: 

David R. Fairbairn, Reg. No. 26,047
THE KINNEY & LANGE BUILDING
312 South Third Street
Minneapolis, MN 55415-1002
Telephone: (612) 339-1863
Fax: (612) 339-6580

DRF:MJD